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Person To Contact:
, ID No.

Telephone Number:

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Date:
June 25, 2008

Legend

City C =

Plan =

Dear

This responds to your authorized representative's letter of October 25, 2007, and subsequent correspondence, on behalf of City C and its 457 plan, requesting a ruling concerning the proposed amended and restated deferred compensation plan (the "Plan") which C intends to be an updated eligible deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986 (the "Code"), as amended under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and in subsequent legislation. The Plan has been or will be adopted only by C, which is represented to be an eligible governmental employer described in section 457(e)(1)(A) of the Code.

Under the Plan a participant, who is currently an employee of C, may elect to defer compensation that would have been received for services rendered to C in any taxable year until death, severance from employment, attainment of age 70½, or until the occurrence of an unforeseeable emergency. The Plan also contains a provision allowing an elective in-service distribution of de-minimis plan account balance of \$5,000.00 or less to be paid to a participant from his or her account in certain limited circumstances set forth thereunder and in section 457(e)(9)(A). In addition, the Plan authorizes C to permit in-service distributions of certain amounts rolled over into the Plan from other eligible retirement plans, in accordance with Notice 2004-67, 2004-2 CB 376, provided that the Plan complies with this notice's requirements, such as maintaining these rollovers in separate accounts.

The Plan also permits C to establish a program allowing participants to take loans from their plan accounts, subject to certain restrictions. Loans made under the Plan are subject to rules in the Plan and in § 1.457-6(f)(2) of the Income Tax Regulations, including provisions restricting the maximum amount and term of a plan loan.

Under the Plan, the amounts that may be deferred under the annual maximum limitation and the catch-up provisions are within the limitations of section 457, including the section 457(c) coordinated deferral provision.

A participant's election under the Plan to defer compensation not yet paid must be filed prior to the beginning of the month in which the compensation to be deferred is paid or made available. The Plan provides for a maximum amount that may be deferred by a participant in any taxable year and also provides for a catch-up computation for amounts deferred for one or more of the participant's last three taxable years ending before he attains normal retirement age under the Plan.

The Plan also provides for the age 50 plus catch-up contributions described in section 414(v). However, the Plan provides that a participant can only utilize one of the two catch-up contribution provisions during a single year.

With certain limitations, a participant or a beneficiary (including an alternate payee) may elect the manner in which their deferred amounts will be distributed. The Plan provides that the manner and time of benefit payout must meet the distribution requirements of sections 401(a)(9) and 457(d)(2) of the Code.

The Plan provides that amounts of compensation deferred thereunder are to be transferred to and held in a trust described in section 457(g) for the exclusive benefit of the participants and their beneficiaries. The rights of any participant or beneficiary to payments pursuant to the Plan are generally nonassignable and not subject to pledge, assignment or encumbrance.

Section 457 of the Code provides rules for the deferral of compensation by an individual participating in an eligible deferred compensation plan as defined in section 457(b).

Section 457(a)(1)(A) of the Code provides that in the case of a participant in an eligible governmental deferred compensation plan, any amount of compensation deferred under the plan and any income attributable to the amounts so deferred shall be includible in gross income only for the taxable year in which such compensation or other income is paid to the participant or beneficiary.

Section 457(b)(5) prescribes that an eligible deferred compensation plan must meet the distribution requirements of section 457(d).

Section 457(d)(1)(A) provides that for a section 457 plan to be an eligible plan, the plan must have distribution requirements providing that under the plan amounts will not be made available to participants or beneficiaries earlier than i) the calendar year in which the participant attains age 70½, ii) when the participant has a severance from employment with the employer, or iii) when the participant is faced with an unforeseeable emergency as determined under Treasury regulations.

Section 457(e)(1)(A) defines an eligible employer to be a state, political subdivision of a state, any agency or instrumentality of a state or political subdivision of a state.

Section 457(g) provides that a plan maintained by an eligible governmental employer shall not be treated as an eligible deferred compensation plan unless all assets and rights purchased with such deferred compensation amounts and all income attributable to such amounts, property, or rights of the plan are held in trust, for example in custodial accounts or annuity contracts, for the exclusive benefit of participants and their beneficiaries.

Based upon the provisions of the Plan summarized above and the documents presented, we conclude as follows:

1. The Plan constitutes an eligible deferred compensation plan as defined in section 457(b) of the Code as amended under EGTRRA and subsequent statutes.
2. Amounts of compensation deferred in accordance with the Plan, including any income attributable to the deferred compensation, will be includible under section 457(a)(1)(A) in the recipient's gross income only for the taxable year or years in which amounts are paid to a participant or beneficiary in accordance with the terms of the Plan.

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than the above-described Plan. City C has represented that it does not provide its participants with the option to make contributions to a deemed IRA under the Plan, and this ruling is conditioned upon this representation. If the Plan is significantly modified, this ruling may not necessarily remain applicable.

This ruling is directed only to the Plan and not to any other section 457(b) plan, and it applies only if C revises the Plan submitted on October 25, 2007 with the amendments submitted on February 8, 2008. Section 6110(k)(3) of the Internal Revenue Code provides that this ruling may not be used or cited as precedent.

Sincerely,

Cheryl Press
Senior Counsel, Qualified Plans Branch 2
(Employee Benefits)
(Tax Exempt & Government Entities)

Enclosure (1)